THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION No.1238 of 2007

Dated: 02.04.2007

Between:

Kaki Prakash Reddy and others.

..... PETITIONERS

AND

The Government of A.P., rep. by the District Collector, Visakhapatnam, and others.

.....RESPONDENTS

THE HON'BLE SRI JUSTICE V.V.S. RAO

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ORDER:

The three petitioners seek a writ of Mandamus declaring the action of the respondents, namely, the District Collector, the Mandal Revenue Officer, Gajuwaka Mandal, and the Andhra Pradesh Industrial Infrastructure Corporation (APIIC), in trying to evict them (petitioners) and their family members from land admeasuring Acs.4.12 in survey Nos.46/4, 46/5, 48 and 49 (hereafter called, subject land) situated at Chinagantyada Village and Mandal, Visakhapatnam, without due process of Law as illegal and arbitrary. They also seek a consequential direction to the respondents to assign subject land in their favour.

The brief fact of the matter is as follows. The petitioners and one Kaki Thamminaidu are close relatives. They are allegedly in possession of subject land, which is situated on the edge of Demudu Garuvu tank, for more than thirty years, having occupied the same. They allege that the lands in survey Nos.46/4 and 46/5 were acquired in 1967 under the Land Acquisition Act, 1894, under an award dated 25.02.1968. These lands were given to Industrial Development Projects Corporation (IDPC) and compensation was paid to Seerapu Kunchayya and Kolli Kunchamma, who are landowners. However, IDPC did not take over the lands and they (landowners) were in possession up to 1972. When they left the village for their livelihood, the petitioners and Thamminaidu occupied subject land i.e., land to an extent of Acs.2.11 in survey Nos.46/4 and 46/5 and also part of the land in survey Nos.48 and 49. The petitioners converted subject land into agriculture and raised thatched houses. They also allege that they have raised eucalyptus tope and planted other fruit bearing trees. Thamminaidu also constructed a pucca house, which is assessed to tax by the Gajuwaka Municipality. They also made representation to the Tahsildar for assignment by way of D-Form pattas, in vain. In 1982, when the lands, including subject land, were transferred to APIIC, it directed the petitioners to vacate subject land. However, as there was support from the public to the petitioners, the petitioners could not be evicted. On 17.01.2007, respondents 2 and 4 threatened the petitioners with dire consequences and demanded that they should vacate subject land. Therefore, they filed instant writ petition.

At the stage of admission itself, the Land Acquisition Officer, APIIC, Visakhapatnam, and the Manager (Law) of APIIC, Hyderabad, filed counter-affidavits. In the counter-affidavit filed by the Manager, it is stated that huge extent of land was acquired in Vadlapudi, Tunglam,

Chinagantiyad, Fakeertakya, Jaggarajupeta, Chattivanipale Villages for Industrial Development Project from 1966 to 1972 and in 1988, which includes subject land. The lands acquired were transferred to APIIC by G.O.Ms.No.1162 dated 04.12.1973 and the same were taken over by APIIC and have been allotted to various industrial agencies. The acquired lands include land admeasuring Acs.24.06 situated at Chinagantyada Village, which was acquired for Industrial Development Area and Central Sector Industrial Project in 1967. It is alleged that the petitioners are not in possession of subject land for which compensation was paid to the landowners. The petitioners have filed reply-affidavits denying the allegation that they are not in possession.

The learned counsel for the petitioners sought to produce the documents in evidence that the petitioners are in possession of subject land, which include village voters list and photographs, in support of the contention that the petitioners are in possession of subject land and therefore, they cannot be evicted unless due process of Law is followed. The learned Assistant Government Pleader for Revenue and the learned standing counsel for APIIC opposed the writ petition. They bank upon the factum of acquisition of lands in 1967-1968 and G.O.Ms.No.1162 dated 04.12.1973, whereunder the lands were transferred to APIIC. The learned standing counsel further submits that the lands acquired, which include subject land, have already been allotted to various industrial agencies and therefore, the petitioners are not in possession.

After hearing the learned counsel for the petitioners, the learned Assistant Government Pleader for Revenue and the learned standing counsel for APIIC and perusing the material, the position that would emerge is as follows. The entire land acquired by the Industrial Development Projects including subject land in Chinagantyada Village was statedly transferred to APIIC, which, in turn, transferred the same to various industrial agencies. Though the petitioners admit that the lands were acquired for APIIC, they, however, allege that though APIIC took over the lands, land admeasuring Acs.4.12 in survey Nos.46/4, 46/5, 48 and 49 is still in their (petitioners) possession. Whether the petitioners are in possession of subject land or whether the same was also taken over by APIIC and was allotted to industrial agencies is a question of fact, which cannot be decided in a writ petition. Even though the petitioners have annexed photographs showing their thatched houses, these photographs cannot be correlated to subject land. Therefore, it would be in the interests of the parties to direct second respondent to conduct inspection along with Zonal Manager, APIIC, or other allottees, if any. It shall be open to the petitioners to produce material before the Inspecting team. If it is found that the petitioners are, in fact, in

possession over subject land, as alleged, fourth respondent, to whom subject land was statedly transferred, has to take necessary action against the petitioners under the Public Premises (Eviction of Unauthorised Occupants) Act, 1971. If subject land continues to be poramboke (assessed waste dry), it is for second respondent to take necessary action in the matter, in which situation, if the petitioners are in possession of subject land as on today, as alleged, they cannot be evicted without due process of Law.

The writ petition, with the above observations, is accordingly disposed of. No costs.

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(**V.V.S.RAO, J**)

02th April, 2007
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